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# Labor Law -- Picketing -- Legality of Object -- Selective Hiring of Negroes

forbidding only *loud* and *raucous* sound trucks and that these words conveyed a sufficiently accurate concept of what was forbidden.

More than half of the Justices feel that the decision in the *Saia* case has been repudiated, despite the desire by the majority not to do so. The practical effect of this decision is to indicate that only a municipal ordinance expressly and unequivocally forbidding any amplification of speech whatsoever, would be held invalid; but any words creating an ambiguity would remove the ordinance from that category.

The more liberal thought evinced in the *Saia* case appears preferable. The decision is not consonant with the modern trend toward expansion of civil liberties. Fear of the possible abuse of a right is no excuse for its abrogation or unreasonable abridgment.

## LABOR LAW—PICKETING—LEGALITY OF OBJECT—SELECTIVE HIRING OF NEGROES

Petitioners, as individuals and not as members of a labor union, requested the "Lucky Stores" to engage in selective hiring of Negro clerks based on the proportion of white and Negro customers who patronized the stores. The requested hiring was to be made, as clerical vacancies became available, through the Retail Clerks Union, with whom the stores had a union shop contract. Upon refusal of their demands, the petitioners peaceably picketed one of the stores with signs announcing, "Don't Patronize—Lucky Won't Hire Negro Clerks In Proportion To Negro Trade." The store secured an injunction against the pickets which the latter ignored. Adjudged guilty of contempt, petitioners brought a writ of certiorari to annul the conviction. *Held*, conviction affirmed. Such picketing is for the unlawful object of establishing an arbitrary and discriminatory hiring policy on a racial basis, thereby effecting the equivalent of both a closed shop and a closed union in favor of the Negro race. *Hughes v. Superior Court in and for Contra Costa County*, 198 P.2d 885 (Cal. 1948).

It is well established that peaceful picketing is guaranteed as an incident of free speech by the First and Fourteenth Amendments to the Federal Constitution,[1] though many authors and judges have assailed picketing as extending beyond mere free speech and as a weapon of coercion and intimidation.[2] Peaceful picketing is not permissive, however, if directed toward an unlawful

1. Thornhill v. Alabama, 310 U.S. 88 (1940); Carlson v. California, 310 U.S. 106 (1940); Senn v. Tile Layers Protective Union, 301 U.S. 468 (1937).

2. *See* McKay v. Retail Automobile Salesmens' Local Union, 16 Cal.2d 311, 106 P.2d 373, 395 (1940) (dissenting opinion); 1 TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING § 136 (1940).

or illegal objective;[3] for the right to carry on business, be it called liberty or property, has value, and to interfere with this right without just cause is unlawful.[4]

The Taft-Hartley Act[5] bans the closed shop.[6] Within the jurisdiction of the act picketing for this objective would therefore be unlawful.[7] Many states have outlawed closed shop agreements by statute,[8] but, in the absence of such legislative action, it is established that the closed shop is valid and not against public policy.[9] Where the closed shop is valid, picketing for the purpose of obtaining a closed shop is allowed.[10] An early case, upholding the closed shop, warned that a union which had such an agreement with the employer would open itself to serious criticism if it refused to admit additional qualified men to its membership.[11] It is now well settled that a closed shop plus a closed union,[12] is not a legitimate objective of labor.[13] The possibility of monopoly and interference with the employment opportunity of outsiders inherent in closed shop agreements, coupled with the rights and powers given to labor unions under existing laws, justify this result.[14]

The picketing of a store by Negro non-employees to secure employment

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3. Dorchy v. Kansas, 272 U.S. 306 (1926); Schwab v. Moving Picture Machine Operators, 165 Ore. 602, 109 P.2d 600 (1941); Retail Clerks Union v. Wisconsin Employment Relations Board, 242 Wis. 21, 6 N.W.2d 698 (1942).

4. Dorchy v. Kansas, *supra*.

5. 49 STAT. 449 (1935), as amended, 29 U.S.C.A. § 141 *et seq.* (1947).

6. Closed shop—requires all employees, as a condition of employment, to become and remain members of the contracting union, and requires management to hire union members only, whether or not through the contracting union. TELLER, A LABOR POLICY FOR AMERICA 130 (1945).

7. 49 STAT. 449 (1935), as amended, 29 U.S.C.A. § 141 *et seq.* (1947) ["(a) It shall be an unfair labor practice—

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . . Provided further, that no employer shall justify any discrimination against any employee for non membership in any labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members . . . ."].

8. 1 TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING § 170 (1948 Supp.).

9. Shafer v. Registered Pharmacists Union, 16 Cal.2d 374, 106 P.2d 403 (1940).

10. Hotel and Restaurant Employees v. Greenwood, 249 Ala. 265, 30 So.2d 696 (1947); Park and Tilford Import Corp. v. International Brotherhood of Teamsters, 27 Cal.2d 599, 165 P.2d 891 (1946); McKay v. Retail Automobile Salesmen's Union, 16 Cal.2d 311, 160 P.2d 373 (1940). *Contra*. Colonial Press v. Ellis, 321 Mass. 495, 74 N.E.2d 1 (1947); Fashioncraft v. Halpern, 313 Mass. 385, 48 N.E.2d 1 (1943).

11. *See* Shinsky v. O'Neil, 232 Mass. 99, 121 N.E. 790, 792 (1919).

12. A closed union is commonly defined as one which arbitrarily denies admittance to qualified workers.

13. James v. Marinship Corp., 25 Cal.2d 721, 155 P.2d 329 (1944); Schwab v. Moving Picture Machine Operators, 165 Ore. 602, 109 P.2d 600 (1941); Wilson v. Newspaper and Mail Deliverers' Union, 123 N. J. Eq. 347, 197 Atl. 720 (1938); *accord*, Thompson v. Moore Drydock Co., 27 Cal.2d 595, 165 P.2d 901 (1946); Bautista v. Jones, 25 Cal.2d 746, 155 P.2d 343 (1944); Wallace Corp. v. National Labor Relations Board, 323 U.S. 248 (1944).

14. TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING 29 (Cum. Supp. 1946). *But see* Wallace Corp. v. National Labor Relations Board, 323 U.S. 248, 271 (1944) ("whether the closed shop with or without the closed union should or should not be permitted without supervision is in the domain of policy making, which is not for this court to undertake.")

for members of their race constitutes a labor dispute.[15] Prior cases have held that a closed shop contract could not be made by a union which arbitrarily excluded Negroes solely because of their color,[16] or other qualified persons [17] from membership. This court has extended the decisions of these former cases by holding that the *Negro race constitutes a closed union.* The words of the court are not necessarily confined to this one race, but would appear to apply to all races. Because race and color are inherent qualities, those persons who are born with such qualities constitute among themselves a closed union which others cannot join. Thus, if the store had yielded to the demands of the petitioners in this case, its hiring policy would have constituted, as to a proportion of its employees, the equivalent of both a closed shop and a closed union *in favor* of the Negro race. As to this proportion of jobs, a qualified worker of any other race though a union member, could not have been hired. Therefore, the picketing was properly enjoined.

## MUNICIPAL CORPORATIONS — VALIDATION OF BOND ISSUE

The City of Fort Lauderdale, Florida petitioned to obtain a decree validating an issue of recreational revenue bonds, the proceeds to be used for the purpose of acquiring lands and constructing a municipal recreation center thereon. The principal and interest were to be payable solely from the revenue of the recreational facilities, *and from the proceeds of a utilities service tax.* A freeholder's election, apparently required by the Florida Constitution,[1] had not been conducted. From a judgment for the City, the intervenor appealed. *Held:* Judgment affirmed. No election by the freeholders was required because the pledging of utility taxes is permitted by statute.[2] These bonds do not consti-

15. New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938) (the desire for fair and equitable conditions on the part of persons of any race or color and the removal of discrimination against them by reason of their race and religion is quite as important to those concerned as conditions of employment can be to any labor organization).

16. Williams v. International Brotherhood of Boilermakers, 27 Cal.2d 586, 165 P.2d 903 (1946) (employer may be enjoined from indirectly assisting in carrying out discriminatory practices against Negroes through a closed shop contract); Thompson v. Moore Drydock Co., 27 Cal.2d 595, 165 P.2d 901 (1946); *cf.* Steele v. Louisville and Nashville R.R., 323 U.S. 192 (1944).

17. Bautista v. Jones, 25 Cal.2d 746, 155 P.2d 343 (1944) (if the worker meets the conditions imposed, the union must accept him for membership or give up its demands for a closed shop).

1. FLA. CONST. Art. IX, § 6 (". . . and the Counties, Districts or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts, or Municipalities shall participate, to be held in the manner to be prescribed by law . . .").

2. Fla. Laws Spec. Acts of 1947, c. 24514, § 1 (4) [". . . and to pledge the revenue derived from any such facility (recreational) *or any other available funds* to pay and discharge any bonds which might have been issued in connection with securing moneys to construct or improve such facilities"] (italics ours).